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IN THE

Supreme Court of the United States

October Term, 1960

No. 28

RALPH KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

No. 58

In Re: GEORGE ANASTAPLO,

Petitioner,

vs.

THE BOARD OF BAR EXAMINERS OF THE STATE OF ILLINOIS,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE NATIONAL LAWYERS GUILD (*AMICUS CURIAE* ON BEHALF OF PETITIONERS)

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild respectfully move this Honorable Court for leave to file a brief *amicus curiae* in these cases.

The National Lawyers Guild is a national bar association and, as such, it is of necessity concerned with the maintenance of an independent Bar and the promotion

of justice in the administration of the law. As lawyers, we have a special interest in the criteria for admission to the Bar, and in the application of such criteria in individual cases. Arbitrary, capricious or otherwise unlawful action in this area by administrative or court officials presents a threat to the independence of the Bar and the administration of justice. We subscribe to the view expressed by Chief Justice Taney many years ago that the power to determine who is qualified to be admitted to practice law is not "an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself." *Ex Parte Secombe,* 19 Howard, 9, 13.

Petitioners here appear to have been excluded from their chosen profession for reasons unrelated to the nature and purpose of his calling. The calling of a lawyer requires independence of thought and action, vigorous, fearless and effective advocacy. Often it may demand the courage to support a client's cause against prevailing economic, social and political forces and, indeed, against the government itself. A lawyer will be called upon to argue even to this Court that its ruling of yesterday was in error, that its well-considered judgments should be reversed.

A lawyer is, almost by definition, a challenger to the *status quo.* For if the lawyers had not come forward to challenge long established ways of life and long-recognized precedents of government would we not still be living in a society dominated by laissez-faire economics and "separate but equal" education?

Any criterion for admission to the Bar which concerns itself with an applicant's beliefs or opinions concerning the state, or his expressed opposition to the state, or par-

ticular aspects of the existing structure of the state, or indeed, of the society in which we live, and which have the effect of excluding applicants who have in fact opposed, or are suspected of opposing those "who sit in the seats of the mighty", will hardly serve to improve the quality of the Bar. Rather, it will weaken the Bar by excluding those who may indeed be most capable of vigorous and fearless advocacy against powerful opposition. If an applicant's political views or associations are to be compulsorily disclosed as a condition to admission to practice, we may find a Bar left without members able to offer wholehearted acceptance of the oath that many a lawyer takes upon admission: that he will "never reject for considerations personal to [him]self the cause of the helpless or the oppressed".

We do not believe that applicants for admission to the practice of the law lose their constitutional rights as citizens, nor that they can be compelled to forswear those rights as a condition for admission to the Bar. We do not believe that such persons can be treated as if they were mere applicants for a "job" or striving to enlist in the military or certain services of the United States. Petitioners here appear to have been excluded from their chosen profession for reasons unrelated to the nature and purpose of the calling which he sought to exercise. In imposing nebulous qualifications, then accusing petitioner of failing to meet them, constitutional limitations have been disregarded.

An examination of the briefs and petitions heretofore filed in this case does not indicate that these questions of public importance have been adequately covered by the parties. The National Lawyers Guild therefore asks leave to file the brief herein *amicus curiae*. We are gravely concerned with the issues involved because the radical effect of a decision on this case will extend beyond the borders of the states involved affecting the right of persons not only

to pursue their chosen professions in the states but in the federal jurisdiction as well.

This *amicus curiae* has previously filed a brief *amicus curiae* in *Konigsberg* v. *The State Bar of California and the Committee of Bar Examiners of the State Bar of California*, 353 U. S. 252. It has also filed a brief *amicus curiae* in *Anastaplo* v. *The Board of Bar Examiners of the State of Illinois*, 3 Ill. 2d 471.

The petitioners have consented to the filing of this brief. The respondent in No. 28 has refused to consent; the respondent in No. 58 by whom a late request was made has not yet replied.

Respectfully submitted,

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BRIEF OF THE NATIONAL LAWYERS GUILD (*AMICUS CURIAE* ON BEHALF OF PETITIONERS)

Introduction

The NATIONAL LAWYERS GUILD is a national bar association, among whose fundamental principles is the articulation and preservation of basic constitutional rights and liberties. It is because we perceive in these cases an impact upon the rights and liberties of the bar and the public at large, which extends beyond the vital rights of the petitioners themselves, that we respectfully submit this brief.

This Court, in its opinion on the first hearing of the *Konigsberg* case (353 U. S. 252) declared that the interests of the State do not warrant the sacrifice of those "vital freedoms" that will be endangered by lack of lawyers free to think, speak, and act as members of an independent bar" (353 U. S. 252, 273).

Similarly, Mr. Justice Frankfurter, with whom concurred Mr. Justice Clark and Mr. Justice Harlan, in his concurring opinion in *Schware* v. *Board of Bar Examiners* (353 U. S. 232, 247), stated:

> "The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. • • • [A]ll the interests of man that are comprised under the constitutional guarantees given to 'life, liberty and property' are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield', to quote Devlin, J., in defense of right and to ward off wrong."

It is our profound conviction that real meaning is given to the constitutional guarantees of the right to counsel, the right to a fair trial and to due process of law only through the existence of staunch lawyers who champion those rights on behalf of the defendant, the litigant and the public. It is also firmly embedded, we believe, that in the public forum of ideas and in the legislative process, the lawyer plays a singular role. He is the knowledgable exponent of the traditions, rights and liberties derived from the past and the articulate spokesman for the ideas, viewpoints and opinions of the present and future which contend for development into public policy and law.

We do not claim special privileges for the lawyer as such. We do claim that the lawyer's role is so vital to the fundamental freedoms of our society and to the proper and just functioning of its legislative and adjudicative processes that the lawyer must remain free from coercion or intimi-

dation, whether its source is a mob, a special interest, the government, the courts or the organized bar.

Because we apprehend that such coercion and intimidation inhere in the political and ideological questions which are at the root of the refusal to admit to practice the petitioners in these cases, and because such questions have such wide ramifications for the constitutional organization and functioning of our society, we respectfully submit that political questioning or testing of lawyers cannot be permitted.

I

Before the Bench, the lawyer stands as the shield of the individual against the State's coercive and punitive powers; it is only by his courage, skill and effort that the constitutional prescriptions for due process of law are given full meaning.

It was said by Lord Erskine, perhaps the greatest advocate in Anglo-American legal history, in 1792, during his argument in defense of Thomas Paine and *The Rights of Man*:

> "I will forever, at all hazards, assert the dignity, independence, and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence." [1]

Only rarely, perhaps, if ever, can a lawyer pretend to match the skill and eloquence with which Erskine conducted his defenses.[2] But every lawyer can aspire to the

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[1] Quoted in Stryker, *For the Defense* 217 (1947).

[2] It is perhaps not unmeaningful that Erskine's greatest exploits of advocacy were performed and his reputation earned in ideological prosecutions of defendants for utterances of "seditious libel" against the Crown growing out of political agitation. See Stryker, *op. cit. supra, passim.*

fearlessness with which Erskine defended his clients.[3]

Without the independence of personality and the indomitable courage which characterized Erskine, is an accused's right to counsel truly effective? Who will guard him against the impositions of an overzealous adversary or prosecutor? Who will assure him due process of law?

Our own courts have not ignored this necessity for fearlessness and independence of the advocate before the

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[3] Lord Brougham, himself not without repute as an advocate, commented on Erskine as follows:

"* * * I find that [both] Lord Erskine and M. Berryer possess the great faculty of conducting cases with perfect skill and matchless eloquence, and they had both in perfection and equal measure, the quality of indomitable courage. Lord Erskine, however hard pressed, was no man to fear, either the court or the king or the king's judges, but he did his duty to his client in spite of all that power held up to intimidate or tempt him, and in spite of all opposition, even in those courts in which he practiced and of which he was the ornament and the pride. The same great qualities I have constantly observed in M. Berryer—that which is first of all the quality of an advocate—to reckon everything subordinate to the interests of his client—to have no purpose except to serve his cause effectively—to make no deviation or digression to please either jury, or judge, or the populace or the Crown, but to do his duty looking only to the success of his client. And they who have not the matchless eloquence of these great men may worthily perform the rest of that duty, and may do it to their own honor, and infinitely to the advantage of their clients. In the administration of justice, the great advantage we have over all other nations is, that in this country its purity depends in the first place upon the purity of the judge, but in the next place upon the skill, the prudence, the discretion and the courage of the advocate. I see no worse fate that can befall this Country than losing the purity of its administration of justice—losing its certainty, and those other qualities which are the admiration of the world. I can conceive nothing more fatal to it than an infringement of the independence of the Bar; or a want of courage on the part of an advocate." Quoted in Costigan, *The Full Remarks on Advocacy of Lord Brougham and Lord Chief Justice Cockburn at the Dinner of M. Berryer on November 8, 1864*, 19 Calif. L. Rev. 521 (1931).

Bench.[4] Nor has its significance escaped our practicing lawyers, writers and bar spokesmen.[5]

"If it is true that the lawyer's role is as an independent advocate, whose paramount interest is the fearless and dedicated presentation of his client's cause, then it must also be true that the practice of the law is no profession for the weak minded or the timid. It was said by Sir James Stephen in his *History of the Criminal Law:*

> "'. . . The whole legal profession is pre-eminently a manly one. It is a calling in which success is impossible to the weak or timid, and in which every one, judge or barrister, is expected to do his duty without fear or favor to the best of his ability and judgment.'"[6]

We do not intimate that courage alone is all that is required for a license to practice law. Obviously the requirements of sufficient learning and of morality, honesty and forthrightness are just and reasonable qualities to require of the lawyer.

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[4] See generally, *Cammer* v. *United States*, 350 U. S. 399; *Gallagher* v. *Municipal Court*, 31 Cal. 2d 784; *People* v. *Matteson*, 51 Cal. 2d 777; *People* v. *Wheeler*, 413 C. A. 2d 881; *Chula* v. *Superior Court*, 109 C. A. 2d 24; *Bennett* v. *Superior Court*, 9[illegible] 2d 585; *Platnauer* v. *Superior Court*, 32 C. A. 463; *People* v. *Rongetti*, 344 Ill. 107; *Matter of Rotwein*, 291 N. Y. 116.

[5] See *Report of the Association of the Bar of the City of New York*, December 12, 1950, 37 A. B. A. J. 125 (1951), reprinted in 1 Emerson and Haber, *Political and Civil Rights in the United States*, 483 (2nd Ed. 1958). Editorial, *The Independence of the Bar*, 13 Lawyers Guild Review 158 (1953); Randall, *Our Professional Responsibility: Lawyers Make Freedom a Living Thing*, 43 A. B. A. J. 315, 316 (1957); Cutler, *The Lawyers' Ten Commandments*, 44 A. B. A. J. 1165 (1958); Wittschen, *Letter to W. C. Jacobsen*, 11 Cal. St. B. J. 27, 30 to 32 (1936); Ball, *Freedom of the Bar*, 32 Cal. St. B. J. 109 (1957).

[6] Quoted in Stryker, *op. cit. supra*, Note 2, 120.

But the significant fact about the *Konigsberg* and the *Anastaplo* cases is that neither of these men can be doubted on the score of learning, morality, honesty and forthrightness. Both have passed the tests of their respective State Bar Committees with respect to learning. The morality and integrity of Konigsberg was noted by this Court in its prior opinion in this case (353 U. S. 252) and if anything the record before this Court now has been augmented in that respect. No single shred of evidence casting doubt upon Konigsberg's character was introduced at any hearing of the Bar Committee or the State Court, nor was any turned up by the Bar Committee's independent investigation of Konigsberg's life and background.

Similarly, Anastaplo has presented a record of an unblemished life and there has been no suggestion in the record or in the opinions of the courts below that he is in any manner morally unfit for the fraternity of the law.

It is significant that the very characteristic most essential to the lawyer—that of fearless adherence to a legal principle [7] is the trait which has caused these men to be refused admission. Both men have held fast to the proposition that the First Amendment bars inquiry into one's political beliefs or associations by any arm of the Government, and in addition, Anastaplo has held fast to the thesis of the preamble to our Declaration of Independence. Indeed, their position was that their training as lawyers invested them with the duty to resist impositions upon what they deeply believe to be their constitutional rights. Except for such resistance, neither the California nor the Illinois bar examiners can claim any deficiency in either Konigsberg or Anastaplo.

Can it be that a Bar, whose duty it is to counsel clients as to their rights and liberties, whose duty it is to resist, on

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[7] And a principle which this Court has at least characterized as "not frivolous" (*Konigsberg* v. *State Bar*, 353 U. S. 252, 270).

behalf of clients, all such impositions, whose duty it is to give living meaning to the right to counsel, and the concepts of due process and elemental fairness, can afford to exclude such men? As Professor Chafee has said, "excessive scrupulousness is not so common among lawyers that we can afford to drive it out of the Bar."[8]

II

In private and public life, as well as before the Bench, the independence of the Bar must be preserved because historically society has cast upon the lawyer the role of the knowledgable exponent of the traditions, rights and liberties derived from the past as well as the articulate spokesman for the ideas, viewpoints and movements of the present and future.

It is commonplace among the Bar that the lawyer exercising his rôle of advocate, may play an integral and essential part in the law-making process, which has effects reaching far beyond the factual confines of the case in which he acts. It is just as well known that the lawyer by virtue of his special training and position is peculiarly fitted to play the role of public spokesman for the concepts and ideas which preserve our democratic liberties and which fashion our society's direction.[9]

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[8] Chafee, *The Blessings of Liberty*, 168-169 (1956).

[9] These principles have previously been stated by the Guild in *Editorial*, 13 Lawyers Guild Review 158:

"Litigation seemingly private in character may affect vast interests and produce an impact which may be felt for generations after the litigants have been forgotten.

"The lawyer bears an important responsibility for the creative development of the law, for flexibly molding its control to meet the basic needs of his times. * * * Lawyers discharge their responsibilities as guardians of liberty both through their defense of unpopular defendants as well as through their activities as public spokesmen, as analysts of legislation, as politic representatives."

New Jersey's Chief Justice Vanderbilt has said:

> "In a free society, every lawyer has a fourth responsibility, that of acting as an intelligent, unselfish leader of public opinion—I accent the qualities 'intelligent' and 'unselfish'—within his own particular sphere of influence. In our complicated age sound opinion is more indispensable than it ever was; without it even courageous leadership may fail.
>
> "No individual class in our society is better able to render real service in the molding of public opinion." [10]

Throughout the history of the Anglo-American legal system, advocates in private and public life have performed key functions in the development of its jurisprudence, its legislation, its politics, philosophy and mores.[11]

De Tocqueville's comment on the American legal profession in the nascent days of the Republic is just as apt today as it was in 1830:

> "The influence that it exerts in America is the most powerful existing security against the excesses of democracy. Without this admixture of lawyer-like sobriety, with democratic principles, I question whether democratic institutions could long be maintained, and I cannot believe that a republic could exist at the present time, if the influence of lawyers in public business does not increase in proportion to the power of the people." [12]

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[10] Vanderbilt, *The Five Functions of the Lawyer—Service to Clients and the Public*, 40 A. B. A. J. 31, 32 (1954).

[11] Pound, *Jurisprudence*, 673-706 (1959); See Wright, *Milestones and Concepts of the Lawyer-Citizen*, 41 A. B. A. J. 797 (1955); Cohen, *Some Observations on Advocacy: Judicial and Legislative*, 41 A. B. A. J. (1955); Randall, *Our Professional Responsibility: Lawyers Make Freedom a Living Thing*, 43 A. B. A. J. 315 (1957); Tyrell, *The Lawyer Lights the Way*, 13 Cal. St. B. J. No. 12, page 40 (December, 1938); Drinker, *Remarks on "The Ethics of Advocacy"*, 5 Stan. L. Rev. 349 (1952).

[12] De Tocqueville, *Democracy in America*, quoted in Randall, *op. cit. supra*, note 13, at 318.

If the garments of leadership and influence, historically tailored to the legal profession, are to be worn by the bar of the present and future, can they be made to fit a body made anemic in principal and conviction by refusal to ingest the nourishment of debate and dissent? We submit that the mantle cannot be altered. It will grace only a profession whose frame is muscled with principled courage and nourished with the widest variety of intellectual foods. The organism of such leadership and influence must feed upon debate, dissent, non-conformism and original thought or it will wither and atrophy.

It is vital for an effective application of First Amendment principles throughout our country and among all of its people, that the influence and leadership of the bar be manifested through the expression of all points of view, non-conformists as well as those currently having the sanction of governmental policy.

III

To permit inquiry into the political, social or philosophic views of lawyers would discourage the freedom and independence of thought necessary to produce great exemplary advocates, would deprive the profession of principled men, like the petitioners, who refuse to submit to such inquiry; and would stifle the leadership and courage necessary to fulfill the Bar's traditional functions.

It has been noted above that Erskine's reputation as a fearless advocate was earned principally in ideological prosecutions. The main thrust of his arguments and of the principles which guided them was the freedom of the British press and the right of the British people to petition for redress of their grievances, notably reorganization of the House of Commons.[13]

[13] Stryker, *op. cit. supra*, note 1, *passim*.

Among our own American paragons of advocacy, too, reputations were earned through great exploits in trials basically of ideology. Andrew Hamilton's great moment occurred in his defense of the printer Peter Zenger and his exposition of libertarian rights of speech and press. Darrow had his Scopes trial and even many of his cases, which in form were defenses of acts of violence charged, were outgrowths of the battle of ideas which marked the early Twentieth Century.[14]

Can it be said such exemplars of the art of advocacy could grow from a bar subject to political pressures? Where the pressures are directed at the bar from without there does not seem to be much debate but that they would crush the spirit necessary to produce such advocates.[15]

Yet how do such restrictions or pressures imposed from within the organized bar itself differ in effect from those imposed from without? We submit that there is and can be no difference in effect. If, under the shibboleth that the applicant owes the organized bar complete candor as to his fitness, the bar is permitted to inquire into an applicant's thoughts, beliefs and political associations (with the threat implied that if those thoughts, beliefs or associations do not win the approval of a committee of the

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[14] Stone, *Clarence Darrow for the Defense*, *passim* (1941).

[15] See Randall, *op. cit. supra*, note 6, at 317; Wittschen, *op. cit. supra*, note 5, at 30-32; and Mr. Ransom, then President of the American Bar Association, in 1935 wrote (10 Cal. St. B. J. 315):

> "A legal profession subject to political control or coercion would be as repugnant to the spirit of our institutions as a judiciary supine and politically controlled; and such control or coercion of the profession, if attempted, would in fact be an invasion of the province of the courts as to their officers.
>
> "An independent and outspoken bar, which in its championship of genuine public interest is neither subject to political intimidation nor subservient to the contentions of clients, is the staunchest safeguard of a free people."

organized bar, an applicant otherwise supremely qualified can be denied admission) what other effect can be perceived than that only those whose opinions are orthodox will be admitted or even will apply? This cannot be the soil from which spring the defenders of the unpopular and the oppressed.

Professor Chafee has observed:

> "Here is something else that Hamilton [Alexander Hamilton, who was relied upon by this Court for its opinion, in *Cummings v. State Missouri*, 4 Wall. (71 U. S.) 277, 18 L. ed. 356, said about test oaths that is very pertinent, that they 'excite scruples in the honest and conscientious.' Such men will occasionally refuse to take the oath. They believe (not unreasonably) that it violates at least four provisions of the very Constitution which they swore to support—the *ex post facto* clause, the bill of atttainder clause, the First Amendment and the privilege against self-incrimination in the Fifth Amendment. They consider it an unwarranted invasion of their liberties for anybody to make them declare their lawful, private opinions and activities about politics and economics. So they leave the profession rather than take the oath. Such men may be called overconscientious, but excessive scrupulousness is not so common among lawyers that we can afford to drive it out of the Bar.
>
> "Some experienced lawyers have told me that my apprehension on this score is nonsensical. They insist that no honest lawyer will decline to sign the required affidavit, and that anybody who does have difficulties about signing is sure to be the kind of man whom the bar is better off without. On the contrary, I believe that there are many conscientious

lawyers who will have just the worries I have described."[16]

It is really not remarkable that principled men like the petitioners herein have refused to submit to such pressures. It *is* remarkable that a bar, historically dedicated to the principle of defense and preservation of constitutional liberties, even for the most repugnant,[17] and whose members individually and collectively[18] are called upon to give this dedication life and actuality, should impose such pressures upon its own aspirants.

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[16] Chafee, *op. cit. supra*, note 8 at 167-168.
Professor Chafee went on:

"They will be like Samuel Taylor Glover, when confronted with the Missouri test oath for lawyers at the end of the Civil War.

"Glover was an active St. Louis lawyer who had identified himself with the emancipation of slaves from his youth up, despite the overwhelming preponderance of slavery sentiment in the various states where he had lived. He was a prominent Republican in the campaign of 1860. While it was touch-and-go whether Missouri would secede, Glover was a leader in keeping his state in the Union. Probably no lawyer in Missouri could have subscribed with greater honor to the terms of this test oath. Nevertheless, Glover refused to take it on the ground of principle. He was indicted and convicted after trial for continuing to practice without taking the oath. Luckily for him, the *Cummings* case [*Cummings* v. *State of Missouri*, 4 Wall. (71 U. S.) 277, 18 L. ed. 356], was decided in time to get his conviction reversed. Thereafter he became the recognized head of the St. Louis bar, was retained in 30 cases in the United States Supreme Court and 410 cases in the highest court in Missouri.

"The Exculpatory Oath after the Civil War almost deprived the bar of Glover, the best constitutional lawyer of his time in the West, and of Garland, a future Attorney General."

[17] See Wittschen, *op. cit. supra*, note 5, at 30-32.

[18] See Ball, *op. cit. supra*, note 5, at 111.

Within the last decade the courage and independence of the bar has undergone a series of severe tests. The response of the bar to these tests has not been uniform. Sometimes because of the unpopularity of the defendants or the causes which lawyers have been called upon to espouse the defendants have had extreme difficulty in securing counsel.[19] Yet lawyers and sometimes the organized bar itself have been seen to rise with dedication and firmness to the challenge before which, unfortunately, a large part of the bar has retreated. Mr. Ball, writing while President of the California State Bar, has noted that both that organization and the American Bar Association have within this same past decade affirmed the duty of the bar to provide aid to

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[19] Commager, *Freedom, Loyalty, Dissent*, page 20, footnote 4 (1954):

"Note that the canon of legal ethics provides (Canon XV) the lawyer owes 'entire devotion to the interests of the client * * * no fear of judicial disfavor or public unpopularity should restrain him from full discharge of his duty.' A report of a special committee of the American Bar Association of July, 1953, states that 'American lawyers generally recognize that it is the duty of the bar to see that all defendants, however unpopular, have the benefit of counsel for their defense.' Yet persons charged with subversive activities are finding it almost impossible to obtain counsel. In the Baltimore case of *U. S. v. Frankfeld*, defendants appealed in vain to more than 30 lawyers to take their case. In the case of *Commonwealth of Pennsylvania v. Nelson*, the defendant was forced to represent himself in the trial for sedition, after having appealed in vain to 700 lawyers in Pittsburgh and other eastern cities. In the case of *U. S. v. Flynn, et al.*, defendants submitted to the U. S. Circuit Court of Appeals an affidavit stating that 'they have written to more than 28 law firms throughout the country requesting an interview to discuss the retainer of said firms on the appeal therein. Of this number 12 did not reply at all to appellants' request; all 16 who did reply refused to grant the requested interview on the grounds that they either could not or would not accept a retainer herein.'"

unpopular defendants. He notes further that in situations where lawyers individually have been declining to accept representation of such defendants because of the fear of economic consequences and personal stigma it has devolved upon the organized bar by one means or another to provide such representation. Speaking for the California State Bar Mr. Ball concludes:

> "The State Bar of California will be the first to discipline its members for contemptuous conduct. On the other hand, we will be prompt to defend the complete independence of the lawyer. He should not and cannot be subject to intimidation and abuse at a time when he represents a member of an unpopular political party, otherwise the very person who needs counsel will be deprived of the right of counsel. Furthermore, the lawyer should not be identified with the cause of his client. The right to counsel, independent loyal counsel, is one of the noble traditions of constitutional government."[20]

The decisions in the causes before the Court will not eliminate either the tendency of some lawyers to run before threats and intimidation nor the tendency of others to stand fast to the duties to their clients and the public. However, we submit that the decisions here must greatly strengthen one tendency and weaken the other. The National Lawyers Guild profoundly believes that the Court should speak to strengthen that tendency of the bar and of lawyers as individuals to uphold without fear the full meas-

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[20] Ball, *Freedom of the Bar*, 32 Cal. St. B. J. 109, 125.

ure of the bar's responsibility to clients, to the public and to the full meaning of the constitutional right to counsel.

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